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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
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In The Matter of	*	
	*	
Policies and Rules	*	
Implementing The	*	CC Docket No. 93-22
Telephone Disclosure	*	

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REPLY COMMENTS OF THE DIRECT MARKETING ASSOCIATION ON PROPOSED TELEPHONE DISCLOSURE RULES

The Direct Marketing Association ("DMA") submits these reply comments with respect to the regulations proposed under Title I of the Telephone Disclosure and Dispute Resolution Act (TDDRA) which governs responsibility of telephone companies in the provision of pay-per-call services. The DMA is the principal trade organization representing businesses and nonprofit organizations engaged in the use of direct marketing techniques for the promotion, sale and servicing of a broad that will be subject to the regulations promulgated by the Commission in this proceeding.

INTRODUCTION AND SUMMARY OF POSITION

As the comments of the telephone companies reflect, the Commission's proposals generally accord with the TDDRA and with the established practices of the carriers that offer pay-per-call transmission service. The proposed rules also correctly reflect the view that, although carriers have certain responsibilities under the Act, they should not be obligated to function as law enforcement authorities or to actively police programs offered by information service providers to whom they provide transmission capacity.

However, certain parties have asked the Commission to requirements regarding the content, timing and procedures relating to preambles.

(c) The Commission should proceed cautiously in any endeavor to require that all information services be offered only through a single NPA.

In support, the following is stated:

A NATIONAL UNIFORM POLICY REGARDING BLOCKING PROCEDURES IS IMPERATIVE

As the Commission has correctly noted in the Notice of Proposal Making ("NPRM"), the TDDRA specifies in detail procedures to be followed by telephone companies in response to consumer requests for blocking of access. Recognizing that is not yet technology feasible for telephone companies to offer per program blocking, the statute provides that consumers must be afforded the option, upon request, to block access to all pay-per-call services or the NPA codes that are used for such services. The statute states specifically that except for blocks requested during certain defined 60-day windows, blocking service is to be offered by carriers for a "reasonable" charge. Despite the clarity of the statute, some of the commenting parties have urged the Commission to (i) prohibit the charging of a fee where a subscriber requests blocking in response to or in connection with a complaint about a pay-per-call charge or (ii) to refrain from preempting inconsistent (and presumably more restrictive) state requirements and to characterize the TDDRA rules as "minimum requirements" for blocking.[1/]

Both of these proposals are unlawful. They are also unsound as a matter of policy. The first alternative is nothing more or less than an attempt to rewrite the statute. The Congress has stated unequivocally that requests for blocking made at times other than during the specified 60 day windows "shall . . . be offered at a reasonable fee." 47 U.S.C. § 228(c)(4). Congress recognized that blocking entails a cost and that the cost should be recovered from the consumer who causes it to be incurred. To be sure, the charge must be "reasonable" by reference to cost-of-service or whatever other rate making standard may apply. But, it simply is not possible to read the term "reasonable" as meaning "free".

The second alternative -- to treat the TDDRA procedures as "minimum requirements" and to permit broader or more restrictive rules to be imposed by individual states -- is to "oversee interstate pay-per-call services" and to "recognize the Commission's authority" to prescribe regulations for implementation and enforcement of the national regulatory system. 47 U.S.C. § 228(a). Plainly, in the matter of blocking procedures (as in all other matters governed by the TDDRA), the Congress contemplated that there would be a national standard established by this agency and that this standard would be applicable to all interstate calls.

The establishment of nationwide uniform policies regarding blocking procedures supports broader, more fundamental, policy objectives that underly the TDDRA. Under that Act, local exchange carriers are specifically required to offer subscribers the option of blocking only specific pay-per-call services once this Commission determines that this is "technically and economically feasible." 47 U.S.C. § 228(b)(4)(B). We recognize -- as did the Commission and the Congress -- that this type of blocking is not now technologically feasible. We believe, however, that this approach ultimately represents the best, most effective means of balancing consumer protections with legitimate business interests of information service providers. Without the benefit of the TDDRA, the Commission has already determined that the imposition of restrictive state standards regarding pay-per-call blocking will interfere with the national goal of "encouraging the availability to U.S. consumers of a wide variety of innovative communications and information

There is nothing in the TDDRA which invalidates the legal or policy bases for this Commission action. On the contrary, Congress was plainly aware of the Commission's preemption of intrastate preamble rules and signified its intention that this preemption is to remain in place. In its enactment of the TDDRA, Congress took the somewhat unusual step of specifically reciting that state authorities may establish "additional and complimentary" oversight and regulatory systems or procedures governing intrastate services "so long as such systems and procedures . . . do not significantly impede the enforcement of this section or other Federal statutes." 47 U.S.C. § 228(g)(4). Whether or not separate and specific preamble requirements applicable to intrastate calls may be considered "additional" or "complimentary," such standards plainly would "impede" not only the enforcement of the TDDRA but its basic objectives.

This is so because there remain serious technological and economic obstacles to the use of a preamble message for intrastate calls which differs from the preamble used in conjunction with interstate calls. As the Commission has

ISDN and SS7 technology, not all carriers have that capacity, and fewer carriers still have deployed these technologies at all or most of their central offices. Thus, in some cases, it remains technologically impossible to "sort" calls by jurisdiction in order to match the "correct" preamble with the incoming call. In all cases, as the comments submitted in this docket make plain, the cost to information service providers of using separate preambles would be punitive.

There is no valid reason of policy to impose these burdens upon service providers. The preamble requirement imposed by the Commission in 1991 has worked. As state law enforcement authorities themselves acknowledge, the number of complaints about the pay-per call services has diminished substantially during the last 18-months. The preamble proposed to be adopted by the Federal Trade Commission in the proceedings pending before it is virtually identical to this Commission's original rule. At its most fundamental level, the preamble requirement is not intended to impede the development or use of information services; it is designed simply to make sure that consumers understand the content of the program they have called and its cost. The basic purpose of the preamble rule does not change in relation to the jurisdictional origin of the call. There is no need, therefore, for separate intrastate and interstate preambles. The Commission should maintain its preemption of intrastate preambles under

Section 228(g)(4) of the TDDRA and Title I of the Communications Act.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

is indeed impermissible. Presumably the offering of development of information services or to alter competitive balances among and between information providers and their carriers. Until such time as the Commission can definitively and comfortable reach the conclusion that a single prefix will satisfy present and expected future demand, it should not establish only a single prefix for all interstate pay-per-call services. Instead, the Commission should require carriers to establish, by tariff, procedures that permit information providers to use either the 900 prefix or such other prefixes (except 800) as are then being used by other information out by carriers, there may very well be sufficient state action to implicate First Amendment issues; and, in any case, it is plainly unreasonable to ask telephone companies to sit in judgment as to the proper classification of programs offered by their own customers. In the last analysis, then, the question of classification and assignment of office codes would largely have to be left to the discretion of the information providers themselves. This would create serious administrative problems for consumers, service providers and law enforcement bodies.

The fact is that the rules regarding preambles do -- and will -- provide consumers with information as to the nature and content of the program. There is simply no need, as a matter of policy, to further burden information providers, telephone company and law enforcement authorities with a classification scheme which will provide essentially the same information in a far cruder and therefore less effective form. The proposal to classify program services by office codes should be unequivocally rejected.

Respectfully submitted,

Ian D. Volner

Venable, Baetjer, Howard
& Civiletti
1201 New York Avenue, N.W.
Suite 1000
Washington, D.C. 20005

Counsel to Direct Marketing Association

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